

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

RICHARD ESCAMILLA, OLGA
ESCAMILLA,

Plaintiffs,

vs.

ADT, LLC,

Defendant.

§
§
§
§
§
§
§
§
§
§

SA-23-CV-01037-JKP

ORDER

Before the Court is the above-styled cause of action, which was referred to the undersigned for all non-dispositive pretrial proceedings. On November 15, 2023, the Court granted Plaintiffs' amended motion for leave to file an amended pleading as unopposed, ordered the docketing of Plaintiffs' First Amended Complaint [#14], and dismissed as moot Defendant's motion to dismiss. Defendant thereafter moved for reconsideration of the text order, clarifying that it did oppose the motion for leave. The Court granted the motion, allowing Defendant to file a response in opposition to Plaintiffs' amended motion for leave for the Court's consideration. In the response, Defendant again argues that Plaintiffs failed to comply with the District Court's Standing Order in amending their pleadings and that the Court should not permit Plaintiffs to amend because their amendments are futile.

Plaintiffs did violate the District Court's Standing Order in failing to advise Defendant and the Court of their intent to amend their pleadings. However, Rule 15 favors amendment, and Plaintiffs' First Amended Complaint is their first amendment of their pleadings. The Court will therefore permit the amended pleading to remain on the docket, and Defendant may file a

renewed motion to dismiss challenging the sufficiency of the amended pleadings. If the District Court finds the motion to dismiss to have merit, Plaintiffs will not have an additional opportunity to amend. (*See* Standing Order [#2], at 1.) Finally, the undersigned notes that this case has been referred to the undersigned for all non-dispositive pretrial proceedings. The arguments regarding futility raised in Defendant's response may be presented to the District Court in a motion to dismiss for the District Court's evaluation.

IT IS THEREFORE ORDERED that Defendant file any responsive pleading or renewed motion to dismiss regarding Plaintiffs' First Amended Complaint on or before **January 5, 2023**.

SIGNED this 15th day of December, 2023.



ELIZABETH S. ("BETSY") CHESTNEY
UNITED STATES MAGISTRATE JUDGE